

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ESSILOR LABORATORIES OF AMERICA, INC.,

Plaintiff,

v.

Case No. 08-C-296

ST. PAUL FIRE AND MARINE INSURANCE
COMPANY N/K/A THE TRAVELERS
COMPANIES, INC.,

Defendants.

ORDER

Plaintiff Essilor Laboratories of America, Inc., (“Essilor”) sued St. Paul Fire and Marine Insurance Company, (“St. Paul”) for breach of its duty to defend and indemnify Essilor’s predecessor, W.O.S., in an underlying action that has since been settled and dismissed. Essilor also claims that St. Paul acted in bad faith in refusing the tender of defense made to it in the underlying action. Presently pending before the Court is St. Paul’s motion to dismiss for lack of subject-matter jurisdiction and failure to state a claim upon which relief can be granted, pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6). The motion is set for oral argument on January 13, 2009 and St. Paul has requested that discovery be stayed pending a decision on the motion. Essilor objects, noting that its expert disclosure date is on January 9, 2009, and its expert needs further information before issuing his report.

St. Paul’s request for a stay will be granted. If St. Paul prevails on its motion, the case will be dismissed, at least at this stage of the proceedings, without need for either party to incur further

expense. On the other hand, if the motion is denied, the Court can easily adjust the scheduling order to accommodate Essilor's concerns about its expert discovery deadline. Accordingly, all further proceedings in this matter, except as necessary to respond to St. Paul's motion to dismiss, are hereby stayed. The current scheduling order will be revisited, if necessary, upon disposition of the pending motion.

SO ORDERED this 10th day of December, 2008.

s/ William C. Griesbach
William C. Griesbach
United States District Judge